

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

RALPH SIMON, )  
 )  
 Plaintiff, )  
 )  
 v. ) No. 4:14-CV-1136 JAR  
 )  
 SELECT COMFORT RETAIL CORP., )  
 )  
 Defendant. )

**MEMORANDUM AND ORDER**

This matter is before the Court on Plaintiff's Motion for Leave to Amend Complaint. (Doc. No. 26) In support of its motion, Plaintiff states that it recently learned during discovery that Select Comfort Corporation may have taken part in the design and manufacture of the mattress at issue in this case. (Doc. No. 27 at 3) Plaintiff seeks to add Select Comfort Corporation, parent of wholly owned subsidiary Select Comfort Retail Corporation, as a defendant in this action. Defendant opposes Plaintiff's motion, arguing that Plaintiff has failed to show good cause for leave to amend after the March 1, 2015 deadline in the Case Management Order. (Doc. No. 29)

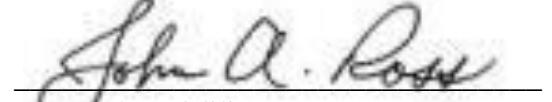
Plaintiff's motion was filed on March 10, 2015, nine days after the motion deadline and certainly not late enough to be prejudicial. Moreover, delay in seeking to amend, alone, is an insufficient justification to deny leave. Issues of delay must be considered with other factors showing prejudice to the non-moving party. See Bell v. Allstate Life Ins. Co., 160 F.3d 452, 455 (8th Cir.1998) (citing Buder v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 644 F.2d 690, 694 (8<sup>th</sup> Cir. 1981)). The Court finds the circumstances do not justify denying Plaintiff leave to amend. Discovery remains open; in fact, on March 9, 2015, the Court granted the parties' joint

motion to extend discovery and expert deadlines in this case. (Doc. No. 25) Neither side has filed dispositive motions and the amended complaint is based on the same facts alleged in the original complaint. Cf. Bediako v. Stein Mart, Inc., 354 F.3d 835 (8th Cir.2004) (given the advanced stage of the litigation process, court did not abuse its discretion in denying plaintiff leave to file amended complaint one year after initial complaint was filed and after defendant had moved for summary judgment). Finally, the trial date remains ten months away.

Accordingly,

**IT IS HEREBY ORDERED** that Plaintiff's Motion for Leave to Amend Complaint [26] is **GRANTED**.

**IT IS FURTHER ORDERED** that the Clerk of Court shall detach and docket Plaintiff's Amended Complaint which was submitted as an attachment to its motion for leave.



John A. Ross  
**JOHN A. ROSS**  
**UNITED STATES DISTRICT JUDGE**

Dated this 20<sup>th</sup> day of March, 2015.